United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,527

622

JOSEPH RAY TAYLOR,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

APPEAL FROM
DISTRICT OF COLUMBIA COURT OF APPEALS
AFFIRMING JUDGMENT OF LOWER COURT

John A. Castagna
Attorney for Appellant
2025 Eye Street, N. W.
Washington, D. C 20006
Tel: 296-2820

STATEMENT OF QUESTIONS PRESENTED

Whether the appellant, an indigent convicted prisoner, was:

1. Deprived of his liberty without due process of law as prohibited by the fifth amendment to the Constitution of the United States,

2. Denied the equal protection of its laws by the District of Columbia, as prohibited by the fourteenth amendment to the Constitution of the United States, and,

3. Denied the right to have <u>compulsory process</u> for obtaining a witness in his favor in violation of the sixth amendment to the Constitution of the United States,

   (a) by being restricted to follow an appeal procedure which did not include a transcript of trial proceedings. A non-indigent not being similarly restricted. And,

   (b) the refusal of the trial Court to subpoena appellant's witness residing within a one-hundred-mile radius of the District of Columbia.

_I_N_D_E_X_

SUBJECT INDEX

CASES CITED

OTHER AUTHORITIES CITED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOSEPH RAY TAYLOR,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 18,527
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Appellee.	)	

STATEMENT OF THE CASE

(a) Factual events relating to arrest and trial.

(b) Procedural events leading to the appeal to the District of Columbia Court of Appeals and to the United States Court of Appeals.

(a) Factual events relating to arrest and trial.

On March 16, 1963, Joseph Ray Taylor was a passenger in a motor vehicle being operated upon a public highway within the District of Columbia by one Louis Messenio. Taylor was seated beside the driver (Louis Messenio) in the front seat. The rear seat was occupied by two other passengers, named as follows:

1. Thomas J. Clarkson, and 2, John Frank Truitt.

The vehicle was owned by a fifth person, named Alfred Authur Laughery III (Bill of Sale, App. viii). The owner was not present and did not occupy the vehicle at the time of the accident.

The motor vehicle was involved in an accident and after traveling some distance, perhaps as much as a mile, it came to a halt. After the car came to a halt, Messenio pulled Taylor over his lap and moved over into the seat formerly occupied by Taylor; Taylor was now sitting on the front seat in the space normally called the middle seat. Thereafter, a police officer arrived upon the scene and arrested all four occupants of the vehicle.

The police officer admits he was unable to identify the driver of the vehicle. He charges them only with being drunk and disorderly. A second police officer arrives at the precinct where the defendants are now detained and he proceeds to interrogate them. The second police officer was neither at the scene of the accident nor at the precinct when the defendants were brought in. On the 18th day of March, 1963, two days after the arrest, the second police officer (Officer B. Traynor), has issued the informations R-7-12-17 charging Taylor. Officer Traynor later testifies that Taylor is the owner of the automobile despite documentary evidence to the contrary (App. viii). He also testifies that he made oath to the informations based upon knowledge obtained from the first police officer (Samuel Williams) and from Louis Messenio, who was released from custody the same evening he was arrested (March 16, 1963). The other three defendants were detained until March 18, 1963, after which they were released on bond. Messenio was not heard from or seen

after March 16, 1963. During the trial, Officer Williams preceded Officer Traynor to the witness stand. Officer Williams had testified that he could not identify the operator of the motor vehicle. Truitt and Clarkson (passengers) both testified that Messenio was in fact the driver of the motor vehicle.

(b) Procedural events leading to the appeal to the District of Columbia Court of Appeals and to the United States Court of Appeals.

On April 22, 1963, after the office of the Corporation Counsel and the police officers involved, refused to investigate Messenio's part in the accident, Taylor filed a petition (R-22) asking for the arrest of Messenio, this was denied by the Court. Taylor filed a motion requesting that the informations be quashed (R-21). This was denied.

On May 7, 1963, Taylor filed a Subpoena, ad-testificandum, for the appe rance of Louis Messenio (App. v, vi). This the authorities refused to serve. Taylor was tried and convicted July 1 and 2, 1963 (R-10-15-19).

A motion to proceed on appeal in the District of Columbia Court of Appeals without the prepayment of costs was granted (App. iii).

A motion for a transcript of trial filed with the District of Columbia Court of Appeals was denied (App. iv).

The Judgment of Conviction was affirmed by the District of Columbia Court of Appeals (R-39).

STATEMENT OF POINTS

I. The failure to provide an indigent with the reporter's tranacript of trial proceedings results in a denial of an "adequate" appeal.

II. The substitute procedure providing for the preparation of a "statement of proceedings and evidence" is not equal to or comparable to a reporter's transcript of proceedings.

III. The refusal of the District of Columbia Court of General Sessions to issue subpoena for Maryland resident resulted prejudicially to the defendant.

ARGUMENT

I and II

1. The failure to provide indigents with the reporter's transcript results in a denial of an "adequate" appeal.

II. The substitute procedure providing for a "statement of proceedings and evidence" is not equal to or comparable to a reporter's transcript of proceedings.

The appellant was denied a full appellate review in the District of Columbia Court of Appeals. The appellant in his

original appeal to the District of Columbia Court of Appeals raised the following claims of error among others:

1. The right to due process was denied the appellant.

2. The instructions of the Court prejudiced the jury against the appellant.

3. The circumstantial evidence of guilt against the appellant was overcome by the direct evidence of innocence.

In addition, there were other claims of error which could have been raised but which were not raised because there was not any possibility of substantiating them without the transcript of proceedings.

The claims of error which are enumerated above, when substantiated would have resulted in a reversal of appellant's convictions.

The District of Columbia Court of Appeals could not properly have evaluated the foregoing claims of error for the reason that:

1. The District of Columbia Court of Appeals refused to order a transcript of proceedings, and

2. It could only evaluate the claims of error on the basis of a statement of proceedings and evidence 1/ prepared

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1/ Rule 23(a), District of Columbia Court of Appeals.

by a member of the staff of the Corporation Counsel's Office who <u>did not</u> prosecute the case and who was not present during the trial.

A statement of proceedings and evidence prepared by appellant's counsel was rejected by the trial Court in all its essential elements.

Thus the questions raised here are, how does the Court determine whose statement of proceedings and evidence to adopt? In lieu of a stenographic transcript of trial proceedings, how does one insure accuracy when a statement of proceedings and evidence is prepared let us say, by a well-intentioned but forgetful lawyer? Or, when a statement of proceedings and evidence is prepared on hearsay as was done in this case? How does appellant's attorney prove to the District of Columbia Court of Appeals, the inaccuracy of the statement of proceedings and evidence upon which the Court must rely in deciding the appeal? How does one prove the prejudicial comment and conduct of the trial Judge in the presence of the jury?

The purpose for recording stenographically the proceedings of trial is to insure an accurate and comprehensive report of the events of the trial as each event unfolds from moment to moment, as each statement is made by witnesses, counsel and trial Judge, as each ruling is made on testimony, admissability of evidence and procedure.

In lengthy trials a daily transcript may be secured for study by the Court and interested parties and for use the following day in the proceedings.

The use of the trial transcript has long been an e stablished part of appellate procedure and in some jurisdictions no appeal can be had without the trial transcript.

In some jurisdictions, e.g., Maryland, the People's Court of the County would be the equivalent to the General Sessions Court sitting in a criminal matter. In the Maryland People's Court, trial transcripts are not required to be made, although a defendant may supply a reporter for the purpose of stenographically recording the proceedings of the trial. This procedure is the same as that in the General Sessions Court, but an appeal from a decision of the People's Court in Maryland, is had by a trial De Novo in the Circuit Court, whose jurisdiction is comparable to the general jurisdiction of the United States District Court for the District of Columbia. Such a trial De Novo may be before a jury if the defendant so requests.

The Maryland procedure apparently acknowledges that appeals by way of a writ of error or certiorari may be inadequate if a transcript of trial proceedings is not available.

In the District of Columbia Court of Appeals a non-indigent may, of course, submit a trial transcript for

consideration on appeal.[2/]

In the instant case, the indigent appellant had the benefit only of the judgment and discretion exercised by a member of the prosecution staff who prepared the statement of proceedings and evidence for use by the Court of Appeals. Although well-intentioned, this procedure is difficult to equate with a stenographic trial transcript, nor is it a comparable substitute for the same.

This is what the Attorney General of the State of Illinois had to say about the "bystanders transcript" which apparently is the same as a "statement of proceedings and evidence" in the District of Columbia.

> With respect to the so-called bystanders' bill of exceptions or the bill of exceptions prepared from someone's memory in condensed and narrative form and certified to by the trial judge...as to whether that is available in Illinois I can say that everybody out there understands that it is but nobody has heard of its ever being actually used in a criminal case in recent years. I think if you went back before the days of Court reporting you would find them but none today. And I will say that Illinois has not suggested in the brief that such a narrative transcript would necessarily or even generally be the equivalent of a verbatim transcript of all the trial. Griffin v. Illinois, 351 U.S. 12, p. 14, note 4.

The following cases establish criteria for appeals by indigent convicted prisoners:

2/ Rule 23(c), District of Columbia Court of Appeals, App. ii.

1. Griffin v. Illinois, (1956), supra.

2. Burns v. Ohio, (1959), 360 U.S. 252.

3. Smith v. Bennett, (1961), 365 U.S. 708.

4. Eskridge v. Washington State Board, etc., (1958) 357 U.S. 214.

5. Lane v. Brown, (1962), 372 U.S. 477.

6. Coppedge v. U. S., (1961), 369 U.S. 438.

Discussing the Coppedge case first, because it originated in the District of Columbia, in this case the United States Court of Appeals for the District of Columbia Circuit ordered that a tranacript of trial proceedings be furnished to the petitioner and that the application to appeal in forma pauperis be held in abeyance. Thus, this very Court established the principle that an applicant may be entitled to a transcript of trial proceedings upon a claim of error. The trial transcript being necessary to support or reject the lower Court's Certification that the appeal was not taken in good faith. It being the only equitable procedure the Court could follow in adjudicating the matter.

Subsequently based on the trial transcript, this Court rejected the petition filed by Coppedge for permission t. appeal in forma pauperis. The Supreme Court of the United States was then called upon to decide the issue. It is interesting t. note that the Supreme Court had the following to say with respect

to indigent and non-indigent appeals (at pp. 446-447):

> In so holding we have been impelled by considerations beyond the corners of 28 U.S.C. 1915, considerations that it is our duty to assure to the greatest degree possible,...equal treatment for every litigant before the bar. (emphasis supplied)

And at page 447:

> The point of equating the test for allowing a pauper's appeal to the test for dismissing paid cases, is to assure equality of consideration for all litigants. (emphasis supplied)
>
> Even handed administration of the criminal law demands that these cases be given no less consideration than others on the Court's Dockets. Particularly since litigants in forma pauperis may, in the trial Court, have suffered disadvantages in the defense of their cases inherent in their impecunious condition... (emphasis supplied)

In Griffin v. Illinois, supra, it is stated as follows (at p. 18):

> There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance. It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. * * * But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discrimination. (emphasis supplied)

And at page 19:

> There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. (emphasis supplied)

In Smith v. Bennett, supra, the Court quotes Griffin v. Illinois, supra, and Burns v. Ohio, supra, as follows (at pages 710-711):

> The gist of these cases is that because '(t)here is no rational basis for assuming that indigents' motions for leave to appeal will be less meritorious than those of other defendants,' Burns v. State of Ohio, supra, 360 U.S. at pages 257-258, 79 S. Ct. at page 1168, '(t)here can be no equal justice where the kind of trial a man gets depends on the amount of money he has,' Griffin v. People of State of Illinois, supra, 351 U.S. at page 19, 76 S. Ct. at page 591, and consequently, that '(t)he imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law.' Burns v. State of Ohio, supra, 360 U.S. at page 258, 79 S. Ct. at page 1169. (emphasis supplied)

In the Eskridge case, supra, the State's argument was that in lieu of a transcript the petitioner might have utilized notes compiled by someone other than the official Court reporter. The Court found that the petitioner was not afforded an "adequate" appellate review and that he should have been provided with a transcript.

In Lane v. Brown, supra, the Court found that a substitute procedure for appellate review which in effect substituted the judgment of the trial judge for the appellate review, was

unconstitutional and the Court ruled that a transcript should have been provided.

In all of the foregoing cases, it appears that some attempt was made by local authorities to afford the indigents some type of "appellate review";in not one of the cases did the Court find that such substituted procedure was either equal to or comparable with the appellate review which one might have if a trial transcript had been provided.

The appellant in support of this argument relies not only on the constitutional provisions as authority for his position, but also on the following authorities.

Title 28, Section 1915(a), U. S. C. (App. i). It is respectfully submitted that the District of Columbia Court of General Sessions is a "United States Court" within the meaning of the said section of the Code, said Court having been established pursuant to the Constitution of the United States. (Article I, Section 8 (Powers of Congress), Sub-Section 9, (App. i)):

> The Congress shall have power...to constitute tribunals inferior to the Supreme Court.

And, Article III, Section 1 (App. i):

> The judicial power of the United States shall be vested in one supreme Court, and in such <u>inferior Courts</u> as the Congress may from time to time ordain and establish. (emphasis supplied)

Former Section 832 of Title 28, U. S. C., which was the equivalent of present Section 1915(a) of Title 28, U. S. C.,

was construed to include the Courts of the District of Columbia:

> Applying to all Courts of the United States it necessarily includes the Courts of the District, ... The apparent intent of Congress was to give the widest scope to its operations, and there is nothing to show that the Courts of the District of Columbia were to be excluded. (Hale v. Duckett, 43 D.C. App. 285 at p. 287).

Rule 23(c) (App. ii), the District of Columbia Court of Appeals provides for the filing of a reporter's transcript.

Rule 43 (App. ii), the District of Columbia Court of Appeals, provides for the waiver of the filing fee.

It is well settled that where the Court allows an indigent access to appellate review it may not then foreclose his right to any phase of that procedure because of their poverty, i.e., refusal to provide a transcript of trial proceedings. (Burns v. Ohio, supra, at p. 257.)

In a later case, Percy C. Reid v. United States of America, Criminal Numbers U.S. 10062-63 and 10063-63, the District of Columbia Court of Appeals reversed itself and did grant a petition allowing the defendant to proceed in forma pauperis and allowing the defendant to be furnished with a transcript of trial proceedings at government expense. (Order filed February 18, 1964 (App. ix)).

III

The refusal of the District of Columbia Court of General Sessions to issue Subpoenas for Maryland witnesses resulted prejudicially to the defendant.

The main contention at the time of trial was that Messenio was the driver of the car.

A subpoena was requested for Messenio to appear as a witness. (App. v, vi) The Court through its officers and agents refused to serve the subpoena. Messenio was a Maryland resident residing within two or three miles of the District of Columbia boundary. If Messenio had been required to appear as a witness, he would have had to follow one of two courses:

1. He would have to admit that he was the driver of the car, or

2. He would have had to claim self-incrimination.

In either event, the prosecution's case would have collapsed. It would have been unlikely that Messenio would have committed perjury to extricate himself. The right to compulsory process for witnesses is basic. The authority of the District of Columbia Court of General Sessions to issue and serve subpoenas for witnesses is set forth in Public Law 87-873, Oct. 23, 1962, 76 Stat. 1172, Sect. 4 (App. ii).

> By the sixth amendment the accused has the right... to have compulsory process for obtaining witnesses in his favor. No comment need be made on this privilege. (Cooley, Principles of Const Law, 3rd ed., p. 323.)

In a case involving a subpoena for the appearance of a United States Congressman as a witness for the defendant, the prosecution filed a motion to quash the subpoena for the reason that documentary evidence was available in lieu of testimony. The motion to quash the subpoena was denied and this is what the Court said:

> Under the sixth amendment to the Constitution of the United States a defendant accused of a crime is guaranteed the right to compel the attendance of witnesses. Who these witnesses shall be is a matter for the defendant and his counsel to decide. It does not rest with the prosecution or the person under subpoena. The defendant may not be deprived of the right to summon to his aid witnesses who it is believed may offer proof to negate the government evidence or to support the defense. (U. S. v. Seeger, D.C. N.Y. 1960, 180 F. Supp. 467, Weinfeld J.)

In another case involving the fifth and sixth amendments, the Court stated as follows:

> No reason appears in logic, morals or humanity, why an accused, in danger of deprivation of his life or liberty, should in any criminal prosecution, be deprived of these rights by implication. These are fundamental rights which the Courts should safeguard with meticulous care and award to the accused, whether requested or not, unless waiv ed by him, in a manner showing his express and intelligent consent. (Birdwell v. Aderhold, 13 F. Supp. 253, at p. 254.)

In a case where defendant was not allowed timely opportunity to subpoena his witnesses, the conviction was reversed, and the Court commented as follows:

> The admissability and relevancy of the testimony is a matter for the Court and jury, nor can we say how effective the testimony would be if admissable.... To one accused of crime these /right to compulsory process/ are very substantial rights. (Paoni v. U. S., 281 F. 801, at p. 803.)

In the state of Washington the warden of the State penitentiary filed a mandamus proceeding to compel judges to vacate orders requiring the warden to produce in Court to give testimony, a convicted prisoner in the warden's custody. The warden claimed a state statute authorized the taking of depositions. A demurrer to the writ of mandamus was sustained and the writ was quashed. The Court's comment follows:

> The right to compulsory process for necessary and material witnesses on his behalf is a valuable right guaranteed to an accused. It is a right that cannot be denied by legislative act or failure to act. In the interests of justice, it is the duty of the courts to enforce the right. When all is said and done, in every criminal proceeding, as well as in the trial of all other cases, the primary aim of the law is to arrive at the truth of the matter in controversy and no obstacle should be sanctioned that would deny the presence of a competent witness who has knowledge of material facts. (State v. Lonergan, 269 P. 2nd 491, at page 503; 201 Oregon reports 163.)

The right to compulsory process includes the issuance and service of such process. (Casebeer v. Hudspeth, 121 F. 2d 914; Hunter v. Brewer, 163 F. 2d 341.)

The only real issue involved in this argument is whether or not the appellant, Taylor, did in fact request a subpoena for Messenio. This fact to date has not been disputed and the documentary evidence (App. v,vi) shows that such a subpoena was requested and that the subpoena was not served, nor was any effort made by the authorities to serve the subpoena.

Taylor went one step further than the mere request for a subpoena, he petitioned the Court to order the arrest of Messenio and this petition was denied (R-22).

CONCLUSION

Based upon the foregoing arguments, it is respectfully requested that the Judgments of Conviction be reversed.

John A. Castagna
Attorney for the Appellant

Suite 411
2025 Eye Street, N. W.
Washington, D. C. 20006
Telephone: 296-2820.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing Brief, on this _____ day of _____, 1964, to John R. Hess, Esq., Assistant Corporation Counsel, District Building, Washington, D. C., 20004.

John A. Castagna.

APPENDIX

Constitutional Provisions, Statutes and Rules Involved:

CONSTITUTION OF THE UNITED STATES

Article I, Sec. 8 (Powers of Congress), sub-Sec. 9: "The Congress shall have power . . . to constitute tribunals inferior to the supreme Court."

Article III, Sec. 1, "The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Amendment V, "No persons . . . shall . . . be deprived of /his/ liberty . . . without due process of law."

Amendment VI, "in all criminal prosecutions . . . the accused shall enjoy the rights . . . to have compulsory process for obtaining witnesses in his favor . . ."

Amendment XIV, "Nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

Title 28, Sec. 1915(a), U. S. C.

> "Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.
>
> "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."

Public Law 87-873, Oct. 23, 1962, 76 Stat. 1172.

Sec. 4. . . . "A subpoena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within one hundred miles of the place of the hearing or trial specified in the subpoena. . ."

Sec. 7. "This Act shall take effect on the 1st day of the first month which begins after the 60th day following the date of its enactment."

Approved October 23, 1962.

RULES

Rule 23(c) of the District of Columbia Court of Appeals:

"In cases where the proceedings and evidence in the trial court have been stenographically reported, any party may in his designation of record include, and file in the trial court, one copy of the reporter's transcript, in lieu of a statement of proceedings and evidence."

Rule 43 of the District of Columbia Court of Appeals:

"Where a party is unable to pay the filing fee on appeal, he may by petition under oath, seek leave to proceed without the payment of such fee."

District of Columbia
Court of Appeals
Filed Aug. 13, 1963
C. Newell Atkinson
Clerk

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 2569 Original January Term, 1963

JOSEPH RAY TAYLOR, Appellant,

v.

DISTRICT OF COLUMBIA, Appellee.

TR-6139-63
Criminal Nos. TR-6140-63
TR-6141-63

O R D E R

On consideration of appellant's petition for leave t proceed on appeal in this court without prepayment of costs, and the affidavit in support thereof, it is

ORDERED that the petition be and it is hereby granted.

BY THE COURT:

Andrew M. Hood,
Chief Judge.

August 13, 1963

Copies to:

Honorable Milton S. Kronheim, Jr.
Judge, D. C. Court of General Sessions.

Clerk, D. C. Court of General Sessions.

John A. Castagna, Esquire,
520 Mills Building,
Attorney for Appellant.

Hubert B. Pair, Esquire,
Assistant Corporation Counsel, D. C.
District Building
Attorney for Appellee.

DISTRICT OF COLUMBIA
Court of Appeals
Filed Sep. 6, 1963
C. Newell Atkinson
Clerk

DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 3363, 3364 and 3365 January Term, 1963

JOSEPH RAY TAYLOR, Appellant,

v.

DISTRICT OF COLUMBIA, Appellee.

O R D E R

Upon consideration of appellant's motion for transcript of testimony at the expense of the appellee, and the opposition to said motion, it is

ORDERED that the motion be and it is hereby denied.

Further, on consideration of appellant's motion for an extension of time in which to file brief in said cause, it is

ORDERED that the time be and it is hereby extended to and including September 27, 1963.

BY THE COURT:

September 6, 1963

Andrew M. Hood,
Chief Judge.

Copies to:

John A. Castagna, Esquire
520 Mills Building,
Attorney for Appellant.

Hubert B. Pair, Esquire,
Assistant Corporation Counsel, D. C.
District Building,
Attorney for Appellee.

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS
CRIMINAL DIVISION

DISTRICT OF COLUMBIA - to wit

To the Chief of Police of the

District of Columbia, Greetings:

You are hereby commanded to summon Louis Messenio, 621 60th Avenue, Capitol Heights, Maryland to appear before the D. C. (Jury Court) Branch of the District of Columbia Court of General Sessions at 10:00 o'clock a.m. on the 10th day of May 1963, as a witness for Joseph Ray Taylor, Defendant in T. R. 6138, 6139, 6140 and 6141-63. And not depart the Court without leave thereof.

WITNESS, The Honorable John Lewis Smith, Jr., Chief Judge of the District of Columbia Court of General Sessions, and the seal of said Court this 7th day of May, A.D. 1963.

WALTER F. BRAMHALL
Clerk, District of Columbia
Court of General Sessions

A TRUE COPY
TEST:
WALTER F. BRAMHALL
Clerk, District of Columbia
Court of General Sessions
By s/ Joseph M. Burton
Deputy Clerk

No. TR 6138 thru 6141-63

Samuel Williams
Officer in charge of case
14th Precinct

DISTRICT OF COLUMBIA
COURT OF GENERAL SESSIONS
CRIMINAL DIVISION
Fifth between E and F Streets, N. W.
District of Columbia
vs.
Joseph Ray Taylor
Summons for
Louis Messenio
621 - 60th Ave.
Capitol Heights, Md.

No ret. made, Md.

OFFICE OF THE CLERK
DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS
CRIMINAL DIVISION

May 7, 1963

I hereby certify that I have on this date, at 10:15 a.m.o'clock, a.m., received from John A. Castagna, Attorney for Joseph Ray Taylor, the following subpoenas for service:

1. B. S. Traynor
2. Louis Messenio
3. Thomas J. Clarkson
4. John Frank Truitt
5. Clark King

s/ Joseph M. Burton
Chief Deputy Clerk
(Title)
D. C. Court of General Sessions

Form 78

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS
CRIMINAL DIVISION

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

To the Chief of Police of the
District of Columbia, Greetings:

You are hereby commanded to attach the body of John F. Truitt and immediately have before the District of Columbia Court of General Sessions, to answer unto the United States-District of Columbia touching a certain contempt by him committed, in not attending before said Court as a witness after being thereto legally summoned. Here fail not, and have then this writ, so endorsed as to show how you have executed it.

WITNESS, The Honorable JOHN LEWIS SMITH, JR., Chief Judge of the District of Columbia Court of General Sessions, and the seal of said Court this 10 day of June, A.D., 1963.

WALTER F. BRAMHALL
Clerk, District of Columbia
Court of General Sessions
By Durward M. Taylor, Deputy Clerk

Officer Sam Williams - 14

Truitt, John F.
Camp Springs, Md.
Attachment # TR 6141-63
Returnable before July 1, 1963
Sam Williams, Pct. 14
Rec. by, s/ Sam Williams
6/12/63

Unable to serve -
lives & employed in Md.
Ret. W. O. S.
6/26/63

s/ BBR

CAR ORDER AND BILL OF SALE

Dealer: Central Auto Sales

Purchaser: Alfred Authur Laughery, III
7202 Polling Rd., N. W. 3/16/63

1956 Buick Coupe, Serial No.: SC 5009135
$80.00

Cash as is - Junk $ 80.00

This car is purchased AS IS, unless otherwise specified in writing, as follows:

BUYER'S SIGNATURE: s/ Alfred Authur Laughery III

Salesman: House

Dealer's Signature: Central Auto Sales, 3/16/63

DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED FEB 18 1964
C. NEWELL ATKINSON
CLERK

No. 2656 Original

January Term, 1964

PERCY C. REID, Petitioner,

v.

Criminal Nos. US-10062-63
US-10063-63

UNITED STATES OF AMERICA, Respondent

O R D E R

On consideration of the petition for leave to proceed without payment of costs and the petition for transcripts to be furnished at Government expense, and it appearing that the Government does not oppose either of said petitions, it is

ORDERED that the said petitions be, and the same hereby are, granted.

BY THE COURT:

February 18, 1964

s/ Andrew M. Hood,
Andrew M. Hood,
Chief Judge

Copies to:

Honorable Andrew J. Howard, Jr.
Judge, D.C. Court of General Sessions.

Clerk, D. C. Court of General Sessions.

Bernard M. Dworski, Esquire,
424 Fifth St., N. W.
Attorney for Petitioner.

Frank Q. Nebeker, Esquire,
Assistant U.S. Attorney,
3rd & Const. Ave., N.W.
Attorney for Respondent.

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 18,527

JOSEPH RAY TAYLOR,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

Appeal From The District Of Columbia
Court Of Appeals

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QUESTIONS PRESENTED

Because of the limitations placed by this Court on the issues to be considered in this appeal, the questions presented are:

1. Whether, in order for appellant to obtain an adequate review of his judgments of conviction, it was necessary to furnish him, without prepayment of costs, a reporter's transcript of the proceedings before the District of Columbia Court of General Sessions.

2. Whether, upon the trial of a defendant in the Criminal Division of the District of Columbia Court of General Sessions for violation of the motor vehicle laws of the District of Columbia, the failure to serve upon a Maryland resident a subpoena issued by the Clerk constituted prejudicial error.

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SUBJECT INDEX

CASES CITED

UNITED STATES CODE CITED

DISTRICT OF COLUMBIA CODE, 1961, CITED

RULES OF COURT CITED

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* Cases and authorities chiefly relied upon are marked by asterisks.

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 18,527

JOSEPH RAY TAYLOR,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

Appeal From The District Of Columbia
Court Of Appeals

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

On July 2, 1963, appellant was convicted by a jury in the District of Columbia Court of General Sessions of (1) operating a motor vehicle in the District of Columbia at a time when his operator's permit and privilege to operate a motor vehicle was revoked, (2) "reckless driving," and (3) "leaving after

colliding" (R. 7-9, 12-14, 17-18).[1] The trial court, after an examination of the appellant's traffic record, from which it appeared that he had previously been convicted of "operating after revocation" and "leaving after colliding," sentenced him to 360 days in jail on each of the three charges, the sentence on the charge of "reckless driving" to run concurrently with the charge of "leaving after colliding" (R. 34).

At the trial, there was evidence from which the jury could have found, and apparently did find, that, on March 16, 1963, appellant operated an automobile on Benning Road at speeds up to 65 miles per hour; that he struck an automobile, injuring its occupants, and failed to stop and render assistance[2] (R. 30-34).

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[1] Appellant filed no Joint Appendix as required by Rule 16 of the Rules of this Court. The page references are to the record as paginated in the District of Columbia Court of Appeals.

[2] Because of the limitations placed by this Court on the questions to be briefed and considered on this appeal, appellee deems it unnecessary to set forth in any greater detail the proceedings and evidence at the trial, even though appellant's statement of the case is replete with statements without support in the record.

It was undisputed that appellant's operator's permit and privilege to operate a motor vehicle in the District of Columbia were, at that time, revoked (R. 31).

Following the Court's instructions to the jury (R. 1-6), the following transpired:

* * * * * *

> "Now, I think I have covered everything. Does the Government want me to add anything?
>
> "Mr. Sakayan: No, your Honor, we are satisfied.
>
> "The Court: Does the defendant want me to add anything?
>
> "Mr. Castagna: No, your Honor."

* * * * * *

Appellant appealed to the District of Columbia Court of Appeals (R. 11, 16, 20), and, in accordance with the Rules of that Court,[3] filed:

(1) a Designation of Record which included, among other things,

> "4. Transcript of charge to the jury by Trial Court.
>
> "5. Statement of Errors.

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[3] District of Columbia Court of Appeals Rules 19, 20, 23 and 27.

"6. Statement of Proceedings and Evidence" (R. 24-25);

(2) a Statement of Errors, consisting of

"1. The motion of Joseph Ray Taylor to dismiss for lack of jurisdiction should have been granted, but instead was denied by the court.

"2. The petition of Joseph Ray Taylor for a warrant of arrest for Louis Messenio, should have been granted, but instead was denied by the court.

"3. The circumstantial evidence offered by the prosecution was overcome by the direct evidence of the defense and the jury should have acquitted the defendant of all charges.

"4. Erroneous instruction given to jury, in the charge delivered by the trial judge, resulted prejudicially to the defendant" (R. 26);

and (3) a proposed Statement of Proceedings and Evidence.

Appellee filed objections to the Statement of Proceedings and Evidence, and, as required by Rule 25 of the Rules of the court below, the trial court settled and approved a Statement of Proceedings and Evidence (R. 30-34).

Appellant obtained leave of the court below to proceed on appeal without prepayment of costs, and thereafter moved the court for an order " * * * requiring the District of Columbia

Government to furnish the appellant * * * a transcript of the trial testimony at the expense of the District of Columbia Government * * *." The motion was denied. Briefs were filed, and, after oral argument, the court below affirmed the judgments of conviction. This Court, on June 9, 1964, granted the petition for allowance of an appeal to this Court, but ordered that "[t]he appeal shall be limited to the issues of (1) whether indigents should be provided with the reporter's transcript of proceedings in the District of Columbia Court of General Sessions without prepayment of costs, and (2) the refusal of that court to subpoena Maryland witnesses. "

STATUTES AND RULES OF COURT INVOLVED

United States Code, Title 28:

" 753. Reporters

"(a) Each district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands shall appoint one or more court reporters.

* * * * * *

"(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the

Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous but presents a substantial question. The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States. * * *"

"§ 1915. Proceedings in forma pauperis

"(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

"(b) In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record

on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States."

* * * * * *

District of Columbia Code, 1961:

"§ 4-101. Metropolitan Police district created.

"The District is constituted a police district, to be called 'The Metropolitan Police district of the District of Columbia.' "

"§ 4-102. Police districts and precincts to be established by commissioners.

"The Metropolitan Police district of the District of Columbia shall be coextensive with the District of Columbia * * *."

Supp. III:

"§ 11-982. Compelling attendance of witnesses--Contempt powers--Subpoenas.

"(a) The District of Columbia Court of General Sessions may compel the attendance of witnesses by attachment, and, in any civil or criminal case or proceeding in the court, the judge may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding $50 or imprisonment not exceeding 30 days.

"(b) At the request of any party subpoenas for attendance at a hearing or trial in the District of Columbia Court of General Sessions shall be issued by the clerk of the court. A subpoena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena. The form, issuance and manner of service of a subpoena shall be as otherwise prescribed by Rule 45 of the Federal Rules of Civil Procedure."

"§ 16-703. Process of criminal division--Fees.

* * * * * *

"(c) In cases arising out of violations of any of the ordinances or laws of the District, process shall be directed to the Chief of Police, who shall execute the process and make return thereof in like manner as in other cases."

* * * * * *

Rules of the District of Columbia Court of Appeals:

"Rule 20 Statement of Errors Claimed

"At the time of filing the designation of record, or stipulation with respect thereto, the appellant shall file a statement of the errors claimed to have occurred in the trial court and upon which he intends to rely on appeal."

"Rule 23 Statement of Proceedings and Evidence; Reporter's Transcript

"(a) The statement of proceedings and evidence shall include only such portion of the proceedings and evidence as is necessary fully and clearly to present the rulings of the trial court in which error is claimed.

"(b) The testimony of witnesses shall be stated in narrative form, except that if either party desires it, and the trial court so directs or approves, any part of the testimony shall be stated in question and answer form. If error is claimed in the court's charge to the jury, the entire charge or its substance shall be included in the statement.

"(c) In cases where the proceedings and evidence in the trial court have been stenographically reported, any party may in his designation of record include, and file in the trial court, one copy of the reporter's transcript, in lieu of a statement of proceedings and evidence."

"Rule 24 Objections to Statement of Proceedings and Evidence or to Reporter's Transcript

"Any party objecting to the accuracy or sufficiency of a statement of proceedings and evidence, or a reporter's transcript [if one be filed under Rule 23 (c)], may, within the time prescribed in Rule 27 (j), file objections and proposed amendments, specifying particularly the parts to which objection is made and the point at which proposed amendments are to be inserted."

"Rule 25 Approval of Statement of Proceedings and Evidence; Reporter's Transcript

"(a) All statements of proceedings and evidence shall be submitted to and approved by the trial court.

"(b) No such approval shall be required of reporter's transcripts to which no objection has been made. Objection, if made, shall be settled by the trial court."

"Rule 26 Agreed Statement on Appeal

"When the questions presented by an appeal can be determined without an examination of all the pleadings, evidence and proceedings in the trial court, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by this Court. The statement shall include a copy of the judgment or order appealed from, a copy of the notice of appeal, or of the order allowing the appeal, and a statement of the errors claimed by the appellant. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the questions raised by the appeal, shall be approved by the trial court and shall then be certified to this Court as the record on appeal."

SUMMARY OF THE ARGUMENT

The Congress has not provided any procedure whereby indigents may obtain, at the expense of the District of Columbia Government, a copy of a reporter's transcript of proceedings in cases in the District of Columbia Court of General Sessions. Nor is there any constitutional requirement that a reporter's transcript be furnished in all such cases. A Statement of Proceedings and Evidence, prepared and approved in accordance with the rules of the court below, is generally sufficient for purposes of appellate review of errors alleged to have occurred at trial. Since the Statement of Proceedings and Evidence, settled and approved by the trial court, was adequate in this case, the court below did not err in refusing to order that appellant be furnished, without prepayment of costs, the reporter's transcript of proceedings. And this is true even though it be assumed that the Federal Court Reporter Act can be construed so as to authorize the court to require that an indigent criminal defendant be furnished, at the expense of the United States, a reporter's transcript of proceedings in the District of Columbia Court of General Sessions.

Members of the Metropolitan Police Force, who, by statute, serve criminal process issued by the Court of General Sessions,

have no jurisdiction to serve such process in Maryland. Under that circumstance, among others, it is doubtful whether the authority of the Court of General Sessions to subpoena witnesses residing beyond the limits of the District of Columbia extends to criminal cases.

In any event, appellant has made no showing that he was prejudiced by the failure to serve, upon a Maryland resident, the subpoena issued by the Clerk of the Court of General Sessions. Furthermore, the Maryland resident, who allegedly committed the offenses for which appellant was convicted, was well known to the appellant, but it does not appear that he made any further effort to produce him.

ARGUMENT

I

The failure to provide appellant with a copy of the reporter's transcript of proceedings in the trial court has not rendered his appeal ineffective.

The Congress has provided a procedure whereby indigent criminal defendants may, under certain conditions, obtain, at the expense of the United States Government, stenographic transcripts of proceedings held in federal courts. U. S. C., Title 28, §§ 753,

1915. Section 1915 (a), supra, provides that "[a]ny court of the United States may authorize the * * * defense of any suit * * * without prepayment of fees and costs * * *," and subsection (b) provides that "[i]n any civil or criminal case the court may * * * direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States * * *." Whether the District of Columbia Court of General Sessions is a federal court within the meaning of Section 1915(a), supra, is a question which we understand the United States Attorney intends to brief as amicus curiae. Therefore, in view of this and in view of our approach to the question certified by the court, we deem it advisable to take no positive position on such question until the position and arguments of the United States Attorney are studied. In this connection, however, appellee merely notes that this Court, in Tipp v. District of Columbia, 69 App. D. C. 400, 402, 102 F. 2d 264, 266, pointed out that the court which is now the District of Columbia Court of General Sessions

> "* * * is neither exclusively a United States court nor exclusively a municipal court but a hybrid exercising the functions of both. It has original jurisdiction, subject to a few exceptions, concurrently with the District Court, of all crimes and offenses committed in the District of Columbia 'not

> capital or otherwise infamous and not punishable by imprisonment in the penitentiary * * *.' In this respect it is a court of the United States, although not a constitutional one. On the other hand, when it acts in the exercise of its jurisdiction 'of all offenses against municipal ordinances and regulations in force in the District of Columbia', it possesses all the attributes and essential characteristics of a municipal court or a justice of the peace court, which it was intended to supersede." [Emphasis supplied.]

To the same effect is United States v. Mills, 11 App. D. C. 500.

Also see Opinion of Comptroller General of the United States, No. B-153485 dated March 17, 1964, wherein he concludes that there is no statutory authority to furnish an indigent, at the expense of the United States, a transcript of proceedings before the District of Columbia Court of General Sessions.

Aside from the question of whether the United States has been granted the authority to pay for such transcripts, nowhere in the statutory scheme is there any authority for the District of Columbia to bear or assume any expense of providing indigents with stenographic transcripts of court proceedings. United States Code, Title 28, § 753 (f) provides, in pertinent part, that " * * * [f]ees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis

shall be paid by the United States out of money appropriated for that purpose * * *." Appellant has referred the Court to no comparable statutory provision which requires or even permits the District of Columbia to pay the cost of any stenographic transcript of proceedings furnished an indigent criminal defendant. Section 11-935, D. C. Code, 1961, Supp. III, which is applicable to the District of Columbia Court of General Sessions, merely provides that:

> "In addition to their annual salaries, official reporters for the District of Columbia Court of General Sessions may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the court. The official reporters shall furnish all supplies at their own expense. The court shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as it deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of the court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript."

It can be seen from the foregoing that, unlike the federal statute, Section 11-935 quoted above has no provision for furnishing transcripts, at the expense of the District of Columbia, to indigents in any court.

Since there is no statutory authority for furnishing a reporter's transcript to an indigent at the expense of the District of Columbia, the question arises as to whether an indigent is entitled to a transcript by virtue of the due process and equal protection clauses of the federal constitution. The United States Supreme Court has very carefully pointed out that constitutional requirements may be satisfied by means other than a reporter's transcript. Griffin et al. v. Illinois, 351 U. S. 12; Draper et al. v. Washington et al., 372 U. S. 487; Eskridge v. Washington State Board of Prison Terms and Parole, 357 U. S. 214; Johnson v. United States, 352 U. S. 565; Miller v. United States, 317 U. S. 192. In the Griffin case, the Court stated:

> "* * * We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. The Supreme Court [of Illinois] may find other means of affording adequate and effective appellate review to indigent defendants. For example, it may be that bystanders' bills of exceptions or other methods of reporting trial proceedings

> could be used in some cases. The Illinois Supreme Court appears to have broad power to promulgate rules of procedure and appellate practice. We are confident that the State will provide corrective rules to meet the problem which this case lays bare." (p. 20)

To the same effect the Court, in Draper et al. v. Washington et al., supra, stated:

> "In considering whether petitioners here received an adequate appellate review, we reaffirm the principle, declared by the Court in Griffin, that a State need not purchase a stenographer's transcript in every case where a defendant cannot buy it. 351 U. S., at 20. Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise. A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes, or by a bystander's bill of exceptions might all be adequate substitutes, equally as good as a transcript. * * *" (p. 495)

In the case of Miller v. United States, supra, which arose prior to the Federal Court Reporter Act, the Supreme Court stated that:

> "* * * Historically a bill of exceptions does not embody a verbatim transcript of the evidence but, on the contrary, a statement with respect to the evidence adequate to present the contentions made in the appellate court. Such a bill may be prepared from notes kept by counsel, from the judge's notes, from the recollection of witnesses as to what occurred at the trial, and, in short, from any and all sources which will contribute to a veracious account of the trial judge's action and the basis on which his ruling was invoked.
>
> "Counsel in this case could, therefore, have prepared and presented to the trial judge, as was his duty, a bill of exceptions so prepared, and it would then have become the duty of the trial judge to approve it, if accurate, or, if not, to assist in making it accurately reflect the trial proceedings. * * *" (pp. 198-199)

The holding in Miller is consistent with the holdings by the Supreme Court in later cases on the point.

From the foregoing it is apparent that an indigent need not necessarily be furnished a reporter's transcript in order for him to effectively prosecute an appeal. The District of Columbia Court of Appeals has provided, by court rules, alternative methods by which a review of judgments of the trial court may be obtained. One such method is by an "Agreed Statement on Appeal," as set forth in Rule 26, and the other, which was followed in this case, is by a "Statement of Proceedings and Evidence," as set forth in

Rules 23, 24 and 25. Rules 23 provides, in pertinent part, that "[t]he statement of proceedings and evidence shall include only such portion of the proceedings and evidence as is necessary fully and clearly to present the rulings of the trial court in which error is claimed," that "[t]he testimony of witnesses shall be stated in narrative form, except that if either party desires it, and the trial court so directs or approves, any part of the testimony shall be stated in question and answer form. * * *" Rule 24 provides that "[a]ny party objecting to the accuracy or sufficiency of a statement of proceedings and evidence * * * may * * * file objections and proposed amendments, specifying particularly the parts to which objection is made and the point at which proposed amendments are to be inserted." Rule 25 provides, in pertinent part, that "[a]ll statements of proceedings and evidence shall be submitted to and approved by the trial court."

The aforesaid procedure has, for more than twenty years,[4] been deemed adequate for purposes of appellate review of cases

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[4] This Court can take judicial notice of the fact that thousands of petty offenses are tried each year in the Criminal Division of the District of Columbia Court of General Sessions. For example, in 1963, 64,164 informations were filed in that Court by the District of Columbia Government. See p. 5-1, Annual Report for 1963 Fiscal Year, Government of the District of Columbia.

in the District of Columbia Court of Appeals. Indeed, quite often it is the only method available for review of cases originating in the District of Columbia Court of General Sessions, since the Congress has not provided that all proceedings in that court shall be stenographically reported. Rule 82 (b) of the Civil Rules of the District of Columbia Court of General Sessions provides that:

> "The use of one of the official Court reporters at the request of any of the parties to a case, in any branch of the Court, shall be a matter for determination by the trial judge, having in mind the nature of the case, the necessity or advisability of having an official transcript, and the availability of an official Court reporter. This shall be without prejudice to the right of any party to employ a private court reporter at his own expense."

The Civil rule quoted above is made applicable to the Criminal Division of the Court of General Sessions by Rule 36 of the Criminal Rules of that court.

Applying these rules and principles to appellant's case, even if United States Code, Title 28, §§753 (f) and 1915, supra, authorize the furnishing to an indigent, at the expense of the United States Government, of a transcript of proceedings in the Court of General Sessions, no showing has been made that a reporter's transcript was necessary in order for the appellant to obtain an

effective review of his judgments of conviction. Shortly after filing his notice of appeal and prior to any request for a reporter's "Transcript of Testimony" at the expense of the District of Columbia, appellant filed a Designation of Record, in which he designated: "4. Transcript of charge to the jury by Trial Court," and "6. Statement of Proceedings & Evidence" (R. 24). Appellant also, in accordance with Rule 20 of the rules of the court below, which provides, in pertinent part, " * * * appellant shall file a statement of the errors claimed to have occurred in the trial court and upon which he intends to rely on appeal," filed the following Statement of Errors:

> "The Defendant, Appellant herein, assigns as error committed by the trial court in the above-entitled cause, the following:
>
> "1. The motion of Joseph Ray Taylor to dismiss for lack of jurisdiction should have been granted, but instead was denied by the court.
>
> "2. The petition of Joseph Ray Taylor for a warrant of arrest for Louis Messenio, should have been granted, but instead was denied by the court.
>
> "3. The circumstantial evidence offered by the prosecution was overcome by the direct evidence of the defense and the jury should have acquitted the defendant of all charges.

> "4. Erroneous instruction given to jury, in the charge delivered by the trial judge, resulted prejudicially to the defendant" (R. 26).

Of course the "Transcript of charge to the jury by Trial Court," which is contained in the record, provided a sufficient basis for the court below to consider assignment of error number four. The other three assignments of error, with the possible exception of number three, involved questions of law for a determination of which no reporter's transcript would be necessary or helpful. Although assignment of error number three is a mixed question of fact and law, the Statement of proceedings and Evidence was adequate to review such a narrow factual issue.

With the exception of the question of whether he was driving the automobile, all elements of the offenses necessary to convict were either uncontested or conceded by the appellant. His defense was that another individual, one Louis Messenio, was driving the automobile, and that, when the automobile came to a halt, Messenio pulled appellant into the driver's seat and fled. The Statement of Proceedings and Evidence sets forth the substance of the testimony of the government's witnesses and of appellant's witnesses on this one factual point in issue. Nowhere has the appellant shown in what

respect his position would be strengthened by the reporter's transcript. Lacking such specification, it necessarily follows that the Statement of Proceedings and Evidence, which was prepared in strict accordance with the rules of the District of Columbia Court of Appeals, was sufficient to provide appellant with an adequate review by that court of his judgments of conviction. Even if the court below had the power to provide appellant with a transcript of proceedings at the expense of the United States, it was not required, under the circumstances of this case, to do so. As the United States Supreme Court stated in Draper et al. v. Washington et al., supra, " * * * the fact that an appellant with funds may choose to waste his money by unnecessarily including in the record all of the transcript does not mean that the State must waste its funds by providing what is unnecessary for adequate appellant review * * *" (p. 496).

II

The failure to serve upon the Maryland resident the subpoena issued by the Clerk of the trial court did not constitute prejudicial error.

From the supplemental record, which is before this Court, but which was not before the District of Columbia Court of Appeals,

it appears that appellant presented to the Clerk of the District of Columbia Court of General Sessions a subpoena and an attachment to be served on two Maryland residents.[5] The supplemental record further shows that the police department, which is, under Section 16-703, D. C. Code, 1961, Supp. III, charged with the responsibility of serving criminal process of the Court of General Sessions arising out of violations of any ordinances or laws of the District, returned the subpoena, apparently without service, with the notation "Md.," and returned the attachment with a notation "unable to serve--Lives & employed in Md., Ret. W., O. S. 6-26-63, BBR." (Supp. Record 1-2, 5-6.)

At the time the subpoena and attachment were issued, there was in existence Public Law No. 87-873, 87th Cong., 2d Sess., 76 Stat. 1171 (October 23, 1962). This law provided, among other things, that:

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[5] On September 25, 1964, over the objection of appellee, a Division of this Court, with one judge dissenting, ordered the Clerk of the District of Columbia Court of General Sessions to transmit to the District of Columbia Court of Appeals a supplemental record containing the subpoena and attachment--see also letter in file from Chief Judge Hood to Chief Judge Bazelon dated September 30, 1964.

> " * * * At the request of any party subpenas for attendance at a hearing or trial in the District of Columbia Court of General Sessions shall be issued by the clerk of the said court. A subpena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within one hundred miles of the place of the hearing or trial specified in the subpena. The form, issuance and manner of service of a subpena shall be as prescribed by Rule 45 of the Federal Rules of Civil Procedure."

The aforesaid Act was, prior to being sent to the White House for signature, amended on the floor of the Senate to provide for a 25-mile subpoena jurisdiction in lieu of the 100-mile subpoena jurisdiction as approved by the House of Representatives. Subsequent to acceptance by the House of the Senate amendment, a clerical error occurred in the bill's enrollment. As a result, the enrolled bill as signed by the President provided for subpoenas to be served within a 100-mile radius of the District of Columbia rather than the 25-mile subpoena jurisdiction limitation approved by both the Senate and the House. According to Senate Report No. 297, 88th Congress, 1st Session on H. R. 3537, when this error was discovered, the District of Columbia Court of General Sessions advised the Senate Committee on the District of Columbia that it

was holding in abeyance usage of the extraterritorial subpoena authority until the Congress acted on a bill then pending which would re-enact Public Law No. 87-873 with extraterritorial subpoena jurisdiction changed to 25 miles. This new law, identified as Public Law No. 88-60, 88th Cong., 1st Sess., 77 Stat. 77,[6] was enacted on July 8, 1963, but was made retroactive to January 1, 1963, the effective date of the law which it replaced. The Senate District Committee stated that the purpose of the re-enactment was to remove " * * * any legal cloud surrounding the legal validity of Public Law 87-873 * * *."

The foregoing shows that both the Court of General Sessions and the Congress were in doubt as to the validity of the law authorizing the service of process beyond the confines of the District of Columbia. Assuming, arguendo, that they were mistaken as to the effect of the newly created law, it is highly questionable whether that law, either as originally enacted or as amended, authorizes the service of process beyond the confines of the District of Columbia in criminal cases of a purely local nature.

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[6] Pertinent provision is found in Section 11-982, D. C. Code, 1961, Supp. III.

The main purposes of the Act were to change the name of the Municipal Court and the Municipal Court of Appeals; to increase the ad damnum jurisdiction of the Municipal Court, in civil cases, from $3,000 to $10,000, and to allow the District Court to certify to the Municipal Court actions which would not justify a judgment in excess of $10,000. In the certification of such cases from the District Court, the litigants lost a very valuable right, i.e., the right, under Rule 45 (e), Federal Rules of Civil Procedure, to obtain service of process on a witness "* * * at any place without the District that is within 100 miles of the place of the hearing or trial * * *." To compensate for this loss, the Congress incorporated in the Act an identical provision to that contained in Rule 45 (e), supra, and specified that such process shall be served in the same manner as that specified in Rule 45 of the Federal Rules of Civil Procedure. If such extraterritorial subpoena authority were to extend to local criminal cases, then Section 16-703, D. C. Code, 1961, Supp. III, would, in effect, be repealed, because that section provides that "[i]n cases arising out of violations of any of the ordinances or laws of the District, process shall be directed to the Chief of Police." Nowhere in the Act creating the Court of General Sessions or in its legislative history is there any indication

that any such repeal was intended. Of course, the principle of law is too well settled to require citation of authority that repeals by implication are not favored.

Even assuming that the trial court had, in a minor criminal case, authority to compel the attendance of a Maryland resident, the individual named in the attachment appeared at trial and testified. The individual named in the subpoena was Louis Messenio, who, according to the contention of appellant, was the driver of the automobile. Appellant has not stated what testimony he intended to elicit from this witness, or what steps he, himself, had taken to secure his appearance. As the District of Columbia Court of Appeals stated in Blair v. District of Columbia, 200 A. 2d 93, appeal denied U. S. Court of Appeals, D. C., October 2, 1964, a case involving an identical question:

> "Rule 45 (c) provides in part:
>
> " ' A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age. * * * '
>
> "The agreed statement of proceedings and evidence gives no indication that appellant made any effort on his own to secure the attendance of his alleged recalcitrant witness. Yet the rules clearly gave appellant the right to prepare and serve another subpoena. Thus

> appellant had the power to compel the attendance of the missing witness, and in our view his failure to act precludes the claim that he was denied compulsory process. Compare State ex rel. Wolfe v. District Court, 52 Mont. 556, 160 P. 346 (1916)." [Footnotes omitted.]

Nowhere does it appear that appellant was prejudiced by the absence of the witness who appellant claims was driving the automobile and who, allegedly, committed the offenses. Also, there has been a complete lack of showing that appellant made any effort to secure the attendance of this witness, who unquestionably was well known to the appellant. Because of these factors, coupled with the uncertainty of the trial court's authority to compel the attendance of such witness who resides in the State of Maryland, the judgment of the court below should not be disturbed. This is particularly so since (1) the appellant did not, as required by Rule 20 of the Rules of the court below, originally assign as error the failure to serve process on Maryland residents, and (2) the court below, whose judgment is now being reviewed, did not have the benefit of the supplemental record ordered by this Court.

CONCLUSION

In view of all the foregoing, it is respectfully submitted that the judgment of the court below was, in all respects, correct, and should, therefore, be affirmed.

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BRIEF FOR UNITED STATES OF AMERICA AMICUS CURIAE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18527

JOSEPH RAY TAYLOR, APPELLANT

v.

DISTRICT OF COLUMBIA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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No. 18527

JOSEPH RAY TAYLOR, APPELLANT

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DISTRICT OF COLUMBIA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR AMICUS CURIAE

STATEMENT OF THE CASE

Appellant was charged by separate informations, filed March 18, 1963, in the D.C. Court of General Sessions, with operating a motor vehicle after his operator's permit had been revoked (40 D.C. Code § 302); reckless driving (40 D.C. Code § 605(b)); and leaving the scene after colliding (40 D.C. Code § 609). He was tried by a jury on July 2, 1963, and convicted of all three charges. The court (Kronheim, J.) sentenced him to 360 days imprisonment on each charge. The sentence on the colliding charge was to be consecutive to the one imposed for driving after his permit had been revoked. The sentence on the reckless driving charge was to run concurrently with the one imposed for leaving after colliding (R. 10, 14, 15, 19).

The D.C. Court of Appeals affirmed the judgment of conviction in an opinion dated February 18, 1964 (R. 39).

Appellant had previously requested the D.C. Court of Appeals to furnish him a verbatim transcript of the trial testimony at government expense. His motion alleged:

> 1. The filing of a statement of proceedings and evidence which was objected to by the District of Columbia.
>
> 2. The filing thereafter of a counterstatement of proceedings and evidence by the District of Columbia differing materially from his own.
>
> 3. Court approval of a third statement of proceedings and evidence which was a de facto adoption of appellee's statement.
>
> 4. That the approved statement did not substantially or accurately reflect the trial testimony.
>
> 5. The presence of an official court reporter who stenographically recorded the trial testimony.
>
> 6. Denial of an effective appeal without a verbatim transcript.
>
> 7. The prior filing of a petition and affidavit of poverty. (Supp. R. 1, 2).

This motion was opposed by the District of Columbia on the grounds that:

> 1. No authority, statutory or otherwise, exists to afford the relief requested.
>
> 2. The D. C. Court of Appeals has judicially recognized that no statute or rule permits a transcript at public expense and that there would be no funds for payment even if one were ordered.
>
> 3. Appellant failed to object to the approved statement of proceedings and evidence although ample opportunity to do so existed at the time it was approved by the trial court. (Supp. R. 3, 4).

The court below summarily denied appellant's motion on September 6, 1963.

This Court's order of June 9, 1964, granting this appeal, limits the issues to whether a transcript of the trial proceedings should have been provided at government expense and whether certain witnesses should have been subpoenaed. This brief will

deal with the former issue only. As to the latter see appellee's brief in *Blair* v. *United States*, No. 18710, filed in this Court on August 27, 1964.[1]

STATUTES INVOLVED

Title 28, United States Code, Section 451, provides in part:

> The term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the United States District for the District of Puerto Rico, the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.
>
> * * * * *

Title 28, United States Code, Section 753, provides in part:

> (f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous but presents a substantial question. * * *

---

[1] Interestingly the United States, as respondent to a petition for allowance of appeal from the D.C. Court of Appeals in this same case (See *Blair* v. *United States*, No. 18710), informed the court of the problems in this area of law. Prior to perfecting his appeal in the D.C. Court of Appeals, Blair undertook to seek review here of an order denying him a transcript of trial proceedings at government expense. See respondent's brief in reply to the petition for allowance of appeal, regarding the position of the United States on free transcripts in the Court of General Sessions.

Title 28, United States Code, Section 1915, provides in part:

> (a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.
>
> An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.
>
> (b) In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

* * * * *

Title 11, District of Columbia Code, Section 935, provides:

> In addition to their annual salaries, official reporters for the District of Columbia Court of General Sessions may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the court. The official reporters shall furnish all supplies at their own expense. The court shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as it deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of the court for the records of the court. Except as to transcripts

that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript.

Title 11, District of Columbia Code, Section 963, provides:

> (a) Except as otherwise expressly provided by this section or other law, the District of Columbia Court of General Sessions has original jurisdiction, concurrently with the United States District Court for the District of Columbia. of :
>
> (1) offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less; and
>
> (2) offenses against municipal ordinances or regulations in force in the District.
>
> (b) The Court of General Sessions does not have jurisdiction of the offenses of libel. conspiracy, or violation of the postal or pension laws of the United States.
>
> (c) In all cases, whether cognizable in the Court of General Sessions or in the District Court. the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or for further examination.
>
> (d) The Court of General Sessions has jurisdiction of all criminal cases properly pending in the Municipal Court for the District of Columbia on January 1. 1963.

SUMMARY OF ARGUMENT

A statement of proceedings and evidence may provide an adequate basis for appellate review. Should the Court deem the instant statement insufficient for that purpose and require a transcript at Government expense. there is no need for resort to Constitutional compulsion to achieve that end. The extant statutory scheme can be viewed as broad enough to provide for its production in the D.C. Court of General Sessions or the D.C. Court of Appeals.

ARGUMENT

I. If a remedy for the lack of a transcript is required the answer can be resolved without resort to constitutional compulsion or any absolute requirement for the presence of court reporters at all prosecutions

Appeal to the D.C. Court of Appeals herein was a matter of right. 11 D.C. Code § 741. Although that court's rules provide for a statement of proceedings and evidence (D.C. Ct. Appls. R. 21, 23–25) provision is also made for the filing of a reporter's transcript of the testimony. (D.C. Ct. Appls., R. 21(f), 23(c).) In cases involving state convictions the Supreme Court has taken steps to the end of assuring that where on appeal a transcript is available and necessary for adequate review, such transcript cannot constitutionally be denied one who is without funds to pay for it. *Draper* v. *Washington*, 372 U.S. 487 (1963); *Lane* v. *Brown*, 372 U.S. 477 (1963); *McCrary* v. *Indiana*, 364 U.S. 277 (1960); *Douglas* v. *Green*, 363 U.S. 192 (1960); *Burns* v. *Ohio*, 360 U.S. 252 (1959); *Eskridge* v. *Washington Prison Bd.*, 357 U.S. 214 (1958); *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *cf. Norvell* v. *Illinois*, 373 U.S. 420 (1963). The above state cases appear to rest on an admixture of Equal Protection of the Laws and Due Process of Law embodied in the Fourteenth Amendment, *Douglas* v. *California;* 372 U.S. 353 (1963). (See dissenting opinion of Justices Harlan and Stewart).

The issue as framed by this Court's granting order of June 9, 1964, either requires resort to constitutional criteria for its solution or is to be resolved by this Court in the exercise of its general power to superintend the administration of criminal justice within the jurisdiction. A ruling in appellant's favor through the latter method would have the advantage observed in the so-called "constitutional avoidance rule," and the lack of retroactivity, which no doubt would have serious impact on other convictions under the challenged system.[2]

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[2] The Court's decision in this case can potentially have an effect upon the functioning of the United States Attorney's Office inasmuch as the United States files a great many criminal cases in the D.C. Court of General Sessions each year. A statistical review of United States cases, along with others filed in that court, appears in Chief Judge John Lewis

The method of review under scrutiny here is similar to the bystanders bill and writ of error and no doubt descends from them. It has been and can still be an adequate method of appellate redress. Fed. R. Civ. P. 75(n); Fed. R. Crim. P. 39(b)(1); D.C. Ct. Appls., R. 21, 23–25. See *Miller* v. *United States*, 317 U.S. 192 (1942); *Fraser* v. *Crounse*, 47 A. 2d 96 D.C. Mun. Ct. App. 1946). While the rules of this Court favor a record embodying a transcript of proceedings, especially in light of the Court Reporters' Act, such practice does not render infirm alternatives for other courts. D.C. Cir. R. 12, 33; 28 U.S.C. § 753; see *Poole* v. *United States*, 102 U.S. App. D.C. 71, 250 F. 2d 396 (1957); *Turberville* v. *United States*, 112 U.S. App. D.C. 400, 406, 303 F. 2d 411, 417, *cert. denied*, 370 U.S. 946 (1962).

The Constitution does not command precise equality of litigants at the bar, it only requires that, given the right of appellate review, an indigent defendant must be given an effective appeal, whatever that necessitates. If a statement of proceedings and evidence suffices, constitutional criteria are met.[3] *Griffin* v. *Illinois*, *supra*; *Draper* v. *Washington*, *supra*; *Douglas* v. *California*, *supra*.

This need for elasticity is especially required in dealing with the D.C. Court of General Sessions, as there is no mandatory reporting of all criminal proceedings in that court, the use of official court reporters being in the discretion of the trial judge. D.C. Ct. Gen. Sess. Civ. R. 82.[4] However, this is not an abso-

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Smith's annual report to the Attorney General for the fiscal year of July 1, 1963 through June 30, 1964, outlining the operations of the D.C. Court of General Sessions; reproduced in part as an appendix to this brief.

[3] The great majority of misdemeanor and petty offenses (18 U.S.C. § 1), tried in the D.C. Court of General Sessions are uncomplicated in nature not requiring long or elaborate proof. Indeed many U.S. and most D.C. prosecutions in the nonjury branches take less than thirty minutes from arraignment to verdict. It is thus apparent that it is a relatively simple matter to transcribe the trial testimony either from memory, contemporaneous notes, or a combination thereof.

[4] There are presently 9 official reporters employed by the D.C. Court of General Sessions pursuant to 11 D.C. Code § 932. However, the court has 16 judges (11 D.C. Code § 902), 3 of whom are assigned to the Domestic Relations Branch (11 D.C. Code § 1102). Of the 9 reporters, 3 are permanently assigned to the Domestic Relations Branch leaving 6 reporters for 13 judges. Over the years progress in increasing this staff has been achieved,

lute or arbitrary discretion he exercises. *Premier Poultry Co.* v. *Wm. Bornstein & Son, Inc.*, 61 A. 2d 632 (D.C. Mun. Ct. App. 1948). Therefore, in some cases a transcript will not be available and a statement of proceedings and evidence will be the only basis for appellate review.[5] *Cf. Norvell* v. *Illinois, supra.*

II. Suggested ways for making effective an order providing a transcript at Government expense

This Court conceivably might not reach the question of how payment for the transcript is to be achieved, assuming one were ordered produced. However, such a disposition, containing only a command and no guidance does not appear to be desirable for either the parties or the court reporters, who would be ordered to provide transcripts and left to extraordinary remedies. See *United States* v. *Metzger*, 133 F. 2d 82 (9th Cir.), *cert. denied sub nom. Oswald* v. *United States*, 320 U.S. 741 (1943); *Poe* v. *United States*, 229 F. Supp. 6 (D.D.C. 1964). This need for guidance (see note 7, *infra*), coupled with this Court's superintendence of criminal justice in the District of Columbia,[6] prompts the Amicus to furnish a comprehensive treatment of all the issues logically presented by this case.

The District of Columbia Court of Appeals has understandably taken the apparent position that under the extant statu-

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as illustrated by the fact that in 1956 there were only 4 official court reporters for 13 judges. *Easter* v. *Kass-Berger, Inc.*, 121 A. 2d 868 (D.C. Mun. Ct. App. 1956).

[6] The Amicus does not see this case as ultimately involving whether a court reporter is required to be present in all the various criminal branches (District of Columbia, Traffic, United States and Jury) at all times. A workable solution can be reached once the problem of payment from public funds is solved. This is not an easy problem to resolve. Legislative action would, no doubt, help but does not appear to be forthcoming.

Once the instant issues are resolved a system could no doubt be evolved where upon reasonable request by either party a reporter could be present in cases of more than routine complexity. Most of these would be in the jury branch.

[5] *Griffin* v. *United States*, 336 U.S. 704 (1949); *Fisher* v. *United States*, 328 U.S. 463, 476 (1946); *O'Donoghue* v. *United States*, 289 U.S. 516 (1933); *Ricks* v. *United States*, —— U.S. App. D.C. ——, (334 F. 2d 964 (1964); *Pitts* v. *Peak*, 60 App. D.C. 195, 50 F. 2d 485, *cert. denied*, 284 U.S. 640 (1931).

tory scheme, it is without power to effectively order transcripts at public expense. *Brown* v. *Plant*, 157 A. 2d 289 (D.C. Mun. Ct. App. 1960); *Blair* v. *District of Columbia*, 200 A. 2d 93 (D.C. Ct. App. 1964) (dictum). *Contra*, Order in *Reid* v. *United States*, February 18, 1964, granting a transcript at Government expense (reproduced in Appellant's Br., App. IX).[7]

The Amicus respectfully submits the following alternatives aimed at solution of the problem of making effective an order for a transcript at Government expense should the Court conclude that a transcript is necessary in the instant case.

A. 28 U.S.C. § 1915 which, *inter alia*, provides for appeals *in forma pauperis*, applies to "any court of the United States." In *Huyler's* v. *Houston*, 41 App. D.C. 452 (1914), this Court held that the Police Court[8] was, as a matter of statutory construction, included in the term "proper courts of the United States," for the purpose of a misdemeanor prosecution under the Food and Drug Act.

In *Green* v. *Peak*, 62 App. D.C. 176, 65 F. 2d 809 (1933), appellant was convicted in Police Court of the unlicensed possession of intoxicating liquor and sentenced to pay a fine of $500 or 180 days imprisonment in default of payment. In lieu of payment he commenced serving his sentence. After the expiration of 30 days he applied to the U.S. Commissioner for release under the Indigent Prisoners Act.[9] This was permissible only if Police Court was construed to be a court of the United States, for the Act at that time only applied to such courts. This Court noted that at the election of the United

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[7] This Court has granted a petition for allowance of an appeal in *Reid*, No. 18812, September 11, 1964. In this case, the Court ordered the transcript after the Government filed no opposition to a motion for its production.

An impasse developed as the reporter would not prepare the transcript without guarantee of payment. Funds of the Department of Justice are not available for such purpose. Title 8, United States Attorney's Manual 140 (1963). See 28 U.S.C. §§ 753, 1915. The problem was obviated when counsel were able to agree upon a statement of the facts which, it turned out, were not in dispute. D.C. Ct. App. R. 26. The only issue concerned the applicable rules of law. See *Reid* v. *United States*, 201 A. 2d 867 (D.C. Ct. App. 1964).

[8] Police Court was later merged with the Municipal Court of the District of Columbia, 56 Stat. 190 (1942), which in turn was renamed the D.C. Court of General Sessions, 76 Stat. 1171 (1962). See 11 D.C. Code § 901.

[9] 18 U.S.C. § 3569.

States Attorney, a defendant could be prosecuted for this liquor violation, in either Police Court or what was in effect District Court, unquestionably a court of the United States, these courts having concurrent jurisdiction of the offense. Thus, if the Government chose the former court an indigent would serve his full sentence, but if it chose the latter, release would be forthcoming after the expiration of 30 days. Faced by this anomaly the Court held that that result was not the intendment of Congress; if Police Court was deemed a court of the United States for purposes of prosecution then it should likewise be treated as a court of the United States for relief of such prisoners under the Indigent Prisoners Act.

In the course of its opinion the Court distinguished the earlier case of *United States* v. *Mills*, 11 App. D.C. 500 (1897), which held that Police Court was not a court of the United States within the Indigent Prisoners Act when the local offense of larceny was the basis for commitment. In a dictum it was observed that the present holding did not reverse the *Mills* case, which involved a crime of local jurisdiction.[10] However, there was no occasion to pass upon the question anew. In 1961, ostensibly basing its ruling upon a change in the wording of the Act, this Court was able to undo the rigors of the *Mills* decision and applied the Indigent Prisoners Act to one incarcerated for vagrancy (22 D.C. Code § 3302), by the Municipal Court. *Clemmer* v. *Alexander*, 111 U.S. App. D.C. 189, 295 F. 2d 176 (1961). This opinion, in announcing its concern with the situation of the prisoner as the controlling factor, rather than which court in the District imposed the sentence, substantially impaired the continued viability of the *Mills* distinction. See also *Noerr* v. *Brewer*, 8 D.C. (1 MacArth.) 507 (1874).

In *Tipp* v. *District of Columbia*, 69 App. D.C. 400, 102 F. 2d 264 (1939), the Municipal Court was expressly recognized as a hybrid, being both a court of the United States and a local court depending upon which function it was exercising.

The United States District Court for the District of Columbia has concurrent jurisdiction with the District of Columbia Court of General Sessions of:

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[10] In contradistinction the statute under which appellant was prosecuted for the liquor violation had nationwide federal application.

> (1) offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less; and
>
> (2) offenses against municipal ordinances or regulations in force in the District * * *. 11 D.C. Code § 963. See 11 D.C. Code § 521; Fed. R. Crim. P. 7a.

Thus, the instant offenses which violated the laws of the United States,[11] resulting in three sentences of 360 days (two of them to run consecutively), could have been prosecuted in the District Court and 28 U.S.C. § 1915 would have been clearly applicable. Based on the precedents, the D.C. Court of General Sessions could be said to be in the ambit of § 1915, at least for the purposes of criminal offenses over which the United States District Court has concurrent jurisdiction. *Contra,* Comp. Gen. Rep. B 153485 (March 17, 1964). *A fortiori,* its court of review, the D.C. Court of Appeals, is also a court of the United States. *Federal Trade Comm'n* v. *Klesner,* 274 U.S. 145 (1927).

The only barrier to this interpretation is 28 U.S.C. § 451 which provides in part:

> As used in this title: the term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, * * * and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

Inasmuch as judges of the D.C. Court of Appeals and the D.C. Court of General Sessions hold office for ten years, subject to reappointment, (11 D.C. Code §§ 702, 902), that section would appear to preclude those courts from being within § 1915. However, 28 U.S.C. § 451 was added anew in 1948. 62 Stat. 907 (1948). It was not intended to bring about any major changes but merely, "to make possible a greater simplification in consolidation of the provisions incorporated in [that] title * * *." H.R. Rep. No. 308, 80th Cong., 1st Sess. A52 (1947).

The progenitor of 28 U.S.C. § 1915 was enacted in 1892, 27

[11] *Clemmer* v. *Alexander, supra; Arnstein* v. *United States,* 54 App. D.C. 199, 296 Fed. 946, *cert. denied,* 264 U.S. 595 (1924).

Stat. 252 (1892); applying from the first to courts of the United States. In 1910 it was broadened to encompass criminal cases. 36 Stat. 866 (1910). In *Hale* v. *Duckett*, 43 App. D.C. 285 (1915), this statute was said to apply to all courts of the District of Columbia, it being the intent of Congress to give the widest scope to its operations. As early as 1914, *Huyler's* v. *Houston*, *supra*, the now D.C. Court of General Sessions had been interpreted to be a court of the United States. It has similarly been so interpreted thereafter and should be again herein. In light of this history it is most unlikely that Congress intended to interdict that conclusion by the enactment of § 451 and to forever bar the D.C. Court of General Sessions from being considered as a court of the United States, no matter how compelling the reasons.[12]

Assuming the District of Columbia Courts to be within 28 U.S.C. § 1915, a problem remains whether that section authorizes the ordering of transcripts for indigents. Prior to 1951 that section specifically so provided. In 1951 the provision was stricken. 65 Stat. 727 (1951). See *Parsell* v. *United States*, 218 F. 2d 232 (5th Cir. 1955). It was thought that this was a duplication covered by 28 U.S.C. § 753(f). 1951 U.S. Code Cong. & Ad. News 2593.

However, it has been recognized that the granting of an appeal *in forma pauperis* requires the granting of an effective

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[12] Problems of this nature concerning the applicability of general statutory provisions to the District of Columbia have historically been troublesome. *Compare Keane* v. *Chamberlain*, 14 App. D.C. 84 (1899) *appeal dismissed sub nom. Chamberlin* v. *Browning*, 177 U.S. 605 (1900), *with Hyattsville Bldg. Ass'n* v. *Bouic*, 44 App. D.C. 408 (1916). See generally *United States* v. *Burroughs*, 289 U.S. 159 (1933); *Federal Trade Comm'n* v. *Klesner*, *supra*; *Pitts* v. *Peak*, supra; *Wittek* v. *United States*, 83 U.S. App. D.C. 377, 171 F. 2d 8 (1948), *rev'd on other grounds*, 337 U.S. 346 (1949); *Henderson* v. *E. St. Theatre Corp.*, 63 A. 2d 649 (D.C. Mun. Ct. App. 1948).

Related is the question of the applicability of the Criminal Justice Act, 18 U.S.C. § 3006, 78 Stat. 552 (1964), to the D.C. Court of General Sessions and the D.C. Court of Appeals. On the one hand the quality of representation should not depend upon the court in which the Government decides to prosecute, and on the other there is a doubt whether Congress intended to include those courts and thus concentrate this additional large expenditure in the District of Columbia. See appendix, *infra*. *Compare* 18 U.S.C. § 3006A (b), (c), (d), 78 Stat. 552 (1964), *with* 11 D.C. Code § 963 (Supp. III, 1964), D.C. Ct. Gen. Sess. Crim. R. 13, and Fed. R. Crim. P. 5, 54(a)(2).

appeal, whatever that requires, including a transcript in a proper case. *Griffin* v. *Illinois, supra.* See *Miller* v. *United States, supra.* The power to grant an appeal pursuant to § 1915 would thus logically include the incidental authority to provide a transcript. And so have concluded two concurring judges of this Court in *Whitt* v. *United States*, 104 U.S. App. D.C. 1, 259 F. 2d 158, *cert. denied*, 359 U.S. 937 (1959).

B. Another statute relevant to the effectiveness of ordering transcripts is 11 D.C. Code § 935, 61 Stat. 381 (1947), which grants official reporters of the D.C. Court of General Sessions authority to collect fees for transcripts. It also provides in part:

> The court shall prescribe such rules, practice and procedure pertaining to fees for transcripts as it deems necessary, conforming as nearly as practicable to the rules, practice and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of the court for the records of the court. * * *

Pursuant to this section a fee schedule was established conforming to the one in use in the U.S. District Court approved by the Judicial Conference. D.C. Ct. Gen. Sess. Civ. R. 82. Congressional Committee reports indicate that the purpose of § 935 was to equalize the compensation of official reporters of the then Municipal Court and that of official reporters of the District Courts of the United States. S. Rep. No. 381, 80th Cong., 1st Sess. (1947); H.R. Rep. No. 894, 80th Cong., 1st Sess. (1947).

The rules, practice and procedure established for the U.S. District Court for the District of Columbia with respect to fees for transcripts, require reference to the Court Reporters' Act, 28 U.S.C. § 753. Subsection (f) of that Act provides in part:

> * * * Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose. * * *

It might be possible, therefore, to view Section 935 of Title 11, D.C. Code *supra*, as authorizing the granting and payment of transcripts for indigent criminal appeals by construing it *in pari materia* with the foregoing provision of § 753(f). Although it can be argued that Congress was not concerned with the problem of transcripts for indigents in enacting 11 D.C. Code § 935, the language chosen could fairly contemplate a contrary conclusion. *Cf. Clemmer* v. *Alexander, supra.*

Of course § 935 does refer to a request by a judge for a transcript without payment of a fee to the official reporter. However, to utilize that portion of the section alone and not in conjunction with other relevant enactments in all *forma pauperis* appeals would be unfair to the reporters and do violence to the Congressional intent to equalize the compensation of the official reporters of the D.C. Court of General Sessions and that of the official reporters of the district courts.

Thus, under either of the foregoing theories this Court might remand the case with direction to order a transcript at government expense. A reasonable incident to that remand would be a holding that either the trial court or court of intermediate review has the power effectively to enter such an order. Such result could and should, the Amicus submits, be arrived at through this Court's power of superintendence rather than on a constitutional basis.

Under either analysis it is important to note the potential review power in this Court of judgments of the D.C. Court of Appeals.[13] See 11 D.C. Code § 321. This review authority, albeit by appeal, is not unlike the certiorari power of the Supreme Court. See rules of this Court Governing Review of Cases from the D.C. Court of Appeals. The Court would thus be justified in concluding, in aid of its potential review power, that public funds administered under the Court Reporters' Act, *supra*, are available to provide trial transcripts in appropriate cases at the early stages of the appeal. The problem of whether

[13] One case came to this Court via habeas corpus from the District Court wherein a challange was made to a Court of General Sessions proceeding. See *Lee* v. *Anderson*, No. 17501, decided by unreported order, February 21, 1963. See appellee's brief therein at page 6 for a discussion of the Court of General Sessions' power, as a court created by Act of Congress, within the meaning of 28 U.S.C. § 2255.

a reporter should be made available should be left to the sound discretion of the trial judge when timely request therefor is made and he is advised of the expected length and complexity of the trial and the issues presented therein.

CONCLUSION

Wherefore, the Amicus, hoping its brief has been of assistance to the Court in illuminating the problems presented and possible solutions thereof, respectfully submits, that if the Court concludes appellant has been prejudiced by denial of a trial transcript it will seek a remedy for him, and others similarly situated, without recourse to constitutional interpretation and will undertake to authoritatively resolve the administrative problem of how payment from public funds can be made within the framework of present legislation.

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United States Attorney,
FRANK Q. NEBEKER,
GERALD E. GILBERT,
ALLAN M. PALMER,
Assistant United States Attorneys,
For United States of America Amicus Curiae.

Reproduction, in Part, of Chief Judge John Lewis Smith's Annual Report of the District of Columbia Court of General Sessions to the Attorney General for the Fiscal Year July 1, 1963, Through June 30, 1964

STATISTICAL SUMMARY OF THE BUSINESS OF THE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS COVERING THE FISCAL YEAR JULY 1, 1963, THROUGH JUNE 30, 1964 AND A COMPARISON WITH THE FISCAL YEAR JULY 1, 1962, THROUGH JUNE 30, 1963

TABLE I.—*Number of new cases filed during fiscal year July 1, 1963, through June 30, 1964, as compared with fiscal year July 1, 1962, through June 30, 1963*

	July 1, 1962, to June 30, 1963	July 1, 1963, to June 30, 1964	Percentage of increase or decrease
Criminal Division:			
District of Columbia	38,367	34,904	−9.03
United States	9,533	11,049	+15.90
Traffic	28,797	32,972	+14.50
Total	76,697	78,925	+2.90
Civil Division:			
Class GS	21,065	22,599	+7.28
Class C (small claims)	27,486	26,489	−3.63
Landlord and tenant	94,690	93,046	−1.74
Domestic relations	4,805	5,073	+5.58
Total	148,046	147,207	−.57
Total cases (criminal and civil)	224,743	226,132	+.62
Monthly average of new cases	18,729	18,844	+.62

TABLE II.—*Comparison of number of new cases filed during fiscal year July 1, 1963, through June 30, 1964, with number filed during fiscal year July 1, 1953, through June 30, 1954, exclusive of the intervening years*

	July 1, 1953, to June 30, 1954	July 1, 1963, to June 30, 1964	Percentage of increase or decrease
Criminal Division:			
District of Columbia	29,827	34,904	+17.02
United States	7,987	11,049	+38.34
Traffic	26,193	32,972	+25.88
Total	64,007	78,925	+23.31
Civil Division:			
Class GS	32,636	22,599	−30.75
Class C (small claims)	22,979	26,489	+15.27
Landlord and tenant	64,840	93,046	+43.50
Domestic relations [1]	----------	5,073	----------
Total	120,455	147,207	+22.21
Total cases (criminal and civil)	184,462	226,132	+22.59
Monthly average of new cases	15,372	18,844	+22.59

[1] NOTE.—Percentage of increase not indicated since Domestic Relations Branch did not begin operations until September 17, 1956.

TABLE VI.—*Criminal jury cases during fiscal year July 1, 1963, through June 30, 1964, as compared with fiscal year July 1, 1962, through June 30, 1963*

	July 1, 1962, to June 30, 1963	July 1, 1963, to June 30, 1964
Criminal jury trials pending July 1	711	583
Total jury trials demanded in criminal cases during fiscal year	5,092	6,049
Total criminal jury cases requiring disposition	5,803	6,632
Disposed of during fiscal year	5,220	6,043
Criminal jury cases pending June 30	583	589
Breakdown of pending criminal jury cases as of June 30:		
Assigned for trial on specified dates	583	589
Unassigned	----------	----------
Monthly average of criminal jury trials demanded	424	504
Monthly average of criminal jury case dispositions	435	504
Time within which trial scheduled after demand made, as of June 30 (months)	1	1

U.S. GOVERNMENT PRINTING OFFICE: 1964

REPLY OF APPELLEE TO BRIEF OF UNITED STATES OF AMERICA, AMICUS CURIAE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 18,527

JOSEPH RAY TAYLOR,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

Appeal From The District Of Columbia
Court Of Appeals

CHESTER H. GRAY,
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CASE CITED

UNITED STATES CODE CITED

DISTRICT OF COLUMBIA CODE, 1961, CITED

ACTS OF CONGRESS CITED

RULES OF COURT CITED

UNITED STATES COURT OF APPEALS
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No. 18,527

JOSEPH RAY TAYLOR,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

Appeal From The District Of Columbia
Court Of Appeals

REPLY OF APPELLEE TO BRIEF OF UNITED STATES OF AMERICA, AMICUS CURIAE

PRELIMINARY

The United States Attorney, as amicus curiae, has filed a brief for the United States of America, urging that the court below had the authority to provide appellant, at "government expense," a transcript of proceedings before the Traffic Branch of the District of Columbia Court of General Sessions. Because the appellee feels

that the reasons assigned by the United States Attorney are not well founded in the law, it is constrained to file a reply to such brief.

ARGUMENT

I

The United States District Court does not have concurrent jurisdiction with the District of Columbia Court of General Sessions of the traffic offenses involved.

Section 11-963, D. C. Code, 1961,[1] Supp. III, provides, in pertinent part, that:

> "(a) Except as otherwise expressly provided by this section or other law, the District of Columbia Court of General Sessions has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of:
>
> "(1) offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less; and
>
> "(2) offenses against municipal ordinances or regulations in force in the District." [Emphasis supplied.]

* * * * * *

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[1] This section was derived from the Act of March 3, 1901, C. 854, 31 Stat. 1196.

Completely disregarding the emphasized portion of the afcre-said statute, the United States Attorney states:

> "The United States District Court for the District of Columbia has concurrent jurisdiction with the District of Columbia Court of General Sessions of:
>
> "(1) offenses committed in the District for which the punishment is by fine or by imprisonment for one year or less; and
>
> "(2) offenses against municipal ordinances or regulations in force in the District * * *. 11 D. C. Code § 963. See 11 D. C. Code § 521; Fed. R. Crim. P. 7a.
>
> "Thus, the instant offenses which violated the laws of the United States, resulting in three sentences of 360 days (two of them to run consecutively), could have been prosecuted in the District Court and 28 U. S. C. § 1915 would have been clearly applicable. Based on the precedents, the D. C. Court of General Sessions could be said to be in the ambit of § 1915, at least for the purposes of criminal offenses over which the United States District Court has concurrent jurisdiction. * * *"

Because it is " * * * expressly provided by * * * other law * * *" that all prosecutions for the offenses of "reckless driving," "leaving after colliding," and "operating after revocation" shall be in the District of Columbia Court of General

Sessions, the United States District Court would not have had jurisdiction in this case. In this connection, the Traffic Act of March 3, 1925, 43 Stat. 1121, as amended by Section 4(e) of the Act of July 3, 1926, C. 739, 44 Stat. 814,[2] provides that:

> "All prosecutions for violations of provisions of this Act, excepting section 11 [3] only thereof, and all amendments to the said Act or regulations authorized and promulgated under the authority of said Act and amendments thereto, shall be in the police court of the District of Columbia by information filed by the corporation counsel of the District of Columbia or any of his assistants * * *." [Emphasis supplied.]

Included in the original Traffic Act of 1925 were provisions proscribing "reckless driving" (Section 9(a) of Act, and Section 40-605, D. C. Code, 1961), "leaving after colliding" (Section 10(a) of Act, and Section 40-609, D. C. Code, 1961), and "operating after revocation" (Section 13(d) of Act, and Section 40-489, D. C. Code, 1961). It is apparent, therefore, that the provisions of the aforesaid Traffic Act requiring all prosecutions

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[2] Section 40-603 (i), D. C. Code, 1961.

[3] The excepted section (Section 40-610, D. C. Code, 1961) proscribes the use of devices designed to cause the emission from automobiles of smoke screens.

of the offenses with which appellant was charged and convicted to be in the District of Columbia Court of General Sessions are controlling. An argument similar to that advanced by the United States Attorney was rejected by this Court in Gassenheimer v. The District of Columbia, 6 App. D. C. 108. There an information was filed in the Supreme Court of the District of Columbia, now the United States District Court for the District of Columbia, charging the accused with selling alcoholic beverages to a minor, in violation of an Act entitled "An act to regulate the sale of intoxicating liquors in the District of Columbia," approved March 3, 1893, 27 Stat. 563. The Act provided that prosecutions for violations of its provisions "* * * shall be on information filed in the Police Court," now the District of Columbia Court of General Sessions. In rejecting the argument that the two courts had concurrent jurisdiction over such prosecutions, this Court said:

> "* * * When the legislature distinctly proposes in one statute to regulate a specified matter, and in that statute defines the acts that are to be regarded as offences under it, the penalties to be attached to the commission of those acts, and the tribunal and the mode of proceeding in which the offences are to be cognizable, we do not see that we are at liberty to disregard any one section of the act more than another, and to institute proceedings in another and

> different tribunal or in another or different mode than that pointed out in mandatory terms by the act itself. For that the terms of the act are mandatory, we have no doubt. They leave no discretion to the officer charged with the execution of the act in the matter of the enforcement of penalties under it. * * *" (p. 114)

So it is here. Upon passage of the Traffic Act, the Congress lodged, in first the Police Court, and thereafter the District of Columbia Court of General Sessions, exclusive jurisdiction of prosecutions for the violation of the laws here involved. Under these circumstances, there is no support whatsoever for the contention of the United States Attorney that the appellant could have been prosecuted in the United States District Court.

II

Section 11-935, D. C. Code, 1961, does not authorize the furnishing to an indigent, at the expense of the District of Columbia, of a transcript of proceedings in the Court of General Sessions.

The United States Attorney states that Section 11-935, D. C. Code, 1961, Supp. III, pertaining to court reporters in the Court of General Sessions, can be construed in pari materia with Section 753 (f), Title 28, United States Code. Section 753 (f),

supra, provides for the furnishing, at the expense of the United States, of transcripts to indigents in federal courts. No such provision is contained in Section 11-935, supra, nor is there anything in the section to suggest that it supplements or is to be read in conjunction with Section 753 (f), supra.

The United States Attorney is apparently of the view that transcripts of proceedings in the Court of General Sessions are desirable, and states that such transcripts can, under the present law, be furnished at "government expense." If, by "government expense," the United States Attorney means at the expense of the United States, and there is authority in law to impose such an expense upon the United States, appellee would, of course, have no reason to object. In fact, appellee would welcome, as would, perhaps, the entire bench and bar, the opportunity to dispense with the sometimes difficult task of settling, pursuant to District of Columbia Court of Appeals Rule 27 (k),[4] a statement of proceedings

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[4] "Statements of proceedings and evidence shall be settled and approved by the trial judge within 10 days after the filing of objections or the expiration of time for filing thereof. Objections to reporter's transcripts shall be settled within 10 days after being filed. Agreed statements on appeal shall (as modified, enlarged, or corrected) be approved and certified by the trial judge within 10 days after filing."

and evidence. If, by "government expense," the United States Attorney means at the expense of the District of Columbia, then appellee submits that the Congress has not given the Commissioners authority to disburse funds for any such purposes, and it cannot assent to any such procedure, no matter how desirable it may be.

Assuming, arguendo, the desirability, even in proceedings involving petty offenses, of having a stenographic transcript when a conviction is being appealed, appellee has found no authority which requires that, as an element of due process, an indigent must be furnished a transcript.

In the exercise of authority vested in it by the Congress,[5] the District of Columbia Court of Appeals has, by rules, prescribed the practice and procedure in such court, which includes a provision for a "statement of proceedings and evidence, or reporter's transcript, or agreed statement on appeal."[6] The practice and procedure thus prescribed has, for more than twenty years, been deemed sufficient to satisfy due process requirements for purposes of appellate review. Similar procedures were held to be adequate

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[5] Section 13-101, D. C. Code, 1961, Supp. III.

[6] Rule 27 (h), Rules of the District of Columbia Court of Appeals.

in federal courts, and were dispensed with in federal courts only when the Congress, by enacting the Federal Court Reporter Act, found it more desirable to have stenographic transcripts of all federal proceedings.

The statement of proceedings and evidence, filed in this case, was sufficient to enable appellant to obtain an effective review of his judgments of conviction. The Constitution requires no more. Whether transcripts of proceedings in the Court of General Sessions should be provided an indigent merely because it would be more desirable or convenient is a question for the Congress to weigh and determine.

Respectfully submitted,

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United States Court of Appeals
for the District of Columbia Circuit

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED DEC 17 1964

Nathan J. Paulson
CLERK

No. 18,527

JOSEPH RAY TAYLOR,
Appellant,

v.

DISTRICT OF COLUMBIA,
Appellee.

SUPPLEMENTAL MEMORANDUM TO BRIEF OF AMICUS CURIAE

At pages 10-11 of the Amicus' brief it is stated that the instant offenses could have been prosecuted in either the District Court or the Court of General Sessions. This conclusion, based on 11 D.C. Code §§ 963 and 521, is not correct for it overlooked the provisions of 40 D.C. Code § 603(i) and the statutory policy of limiting Title 40 prosecutions to the Court of General Sessions. But see 40 D.C. Code § 606.

However, since a broadly based consideration of the problem of transcripts for indigents was intended by the Amicus, the theory of argument II, A (Br. 8-13) is still proffered for the Court's consideration in all cases where both lower courts in fact have concurrent jurisdiction over

criminal offenses e.g., misdemeanor prosecutions by the United States under Title 22 of the D.C. Code.

Respectfully submitted,

/s/ DAVID C. ACHESON
DAVID C. ACHESON
United States Attorney

/s/ FRANK Q. NEBEKER
FRANK Q. NEBEKER
Assistant United States Attorney

/s/ ALLAN M. PALMER
ALLAN M. PALMER
Assistant United States Attorney

For United States of America
Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Memorandum has been mailed to attorney for appellee, John R. Hess, Esq., Assistant Corporation Counsel, Appellate Division, 14th & E Streets, N.W., Washington, D.C., and attorney for appellant, John A. Castagna, Esq., 2025 Eye Street, N.W., Washington, D.C., 20006, this 30th day of November, 1964.

/s/ ALLAN M. PALMER
ALLAN M. PALMER
Assistant United States Attorney